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On Behalf of the Marine Fish Conservation Network

Before the Subcommittee on Oceans and Fisheries

Of the Senate Committee on Commerce, Science, and Transportation

On Implementation of the 1996 Sustainable Fisheries Act Amendments

To the Magnuson-Stevens Act

July 29, 1999

Good morning Madame Chair and Members of the Subcommittee, my name is Ken Hinman. I am President of the National Coalition for Marine Conservation. I am appearing before you today on behalf of the Marine Fish Conservation Network (Network), of which I am Co-Chairman. I appreciate the opportunity to present the views of the Network on implementation of the Sustainable Fisheries Act (SFA) by the National Marine Fisheries Service (NMFS) and the regional fishery management councils (councils). The Network is a broad-based coalition of more than 80 leading environmental groups, sport and commercial fishermen, and marine scientists that came together six years ago to seek reform of the nation's fisheries laws. Overall, our member groups represent more than two million Americans.

The Network is unique in that it represents both environmentalists and fishermen. In fact, the commercial and recreational fishermen that are Network members are some of the strongest conservationists you will find. That is what makes the Network truly unique, fishermen working hand in hand with environmentalists to conserve marine fish for future generations.

Enactment of the SFA in 1996 represented a sea change in the way marine fish are to be managed in the United States. No longer would short-term economic concerns be used to allow overfishing and postpone rebuilding. Overfished stocks would be rebuilt as soon as possible. Bycatch, the catch of non-target species, would be assessed and minimized. Essential Fish Habitat (EFH), critical to the long-term sustainability of U.S. fish, would be identified and protected from degradation resulting from both fishing and non-fishing activities. Unfortunately, what began with such promise in 1996 has failed to live up to that promise in 1999.

The Network was the primary advocate of the conservation reforms of the SFA, including mandates to prevent and stop overfishing, rebuild overfished stocks, minimize bycatch, and protect essential fish habitat. As such, we are very concerned that the SFA is implemented as Congress intended. Utilizing our member organizations active in every region of the country, we have evaluated the revised fishery management plans (FMPs) and FMP amendments submitted to NMFS by the councils. We forwarded our report evaluating the councils' response to the SFA entitled *Missing the Boat: An evaluation of fishery management council response to the Sustainable Fisheries Act* to the Subcommittee in February 1999.

Since then, we have been actively involved in NMFS's review of the SFA implementation amendments and have found their response lacking in several areas. Below is a listing of our primary areas of concern.

Overfishing

The SFA requires that FMPs contain a new definition of overfishing, setting both maximum fishing mortality levels and minimum population size thresholds. For species determined to be overfished, it requires that FMPs include conservation measures designed to rebuild the stocks to maximum sustainable yield (MSY) within a prescribed period. The plans must include provisions to restore the population to MSY in less than 10 years, unless the biology of the species dictates a longer rebuilding period, in which case recovery should be “as short as possible.”

Network Issues

- The councils commonly adopted rebuilding plans with the longest recovery periods permitted (10 years), instead of rebuilding overfished stocks in as short a period as possible.
- Short-term overfishing is illegally allowed in several fisheries, e.g., Atlantic sea scallops, monkfish, and black sea bass.
- NMFS’s National Standard Guideline regulations allow overfishing to occur in mixed stock fisheries, unless the stock will be driven to extinction. This “mixed-stock” exception has allowed certain councils to sanction overfishing of severely depleted fish stocks, e.g., Boccacio rockfish on the west coast.

There are several legislative options to address these concerns that the Subcommittee may wish to consider as it develops legislation to reauthorize the Magnuson-Stevens Act. First, prohibit overfishing of every stock in a mixed stock fishery, which would effectively overturn the “mixed stock exception.” Second, prohibit overfishing of each population of an overfished species to prevent even short-term overfishing. Finally, mandate the application of the precautionary approach to fisheries management by requiring that conservation and management measures include a safety margin to provide a buffer against scientific uncertainty, thus guarding against inadvertent overfishing. Caution is particularly important given the fact that the status of 544 species of managed fish is currently unknown. This level of uncertainty is an accident waiting to happen.

Bycatch

The SFA requires councils to establish a standardized reporting methodology to assess the amount and type of bycatch in managed fisheries. The Act also requires councils to adopt

conservation and management measures that avoid bycatch and minimize the mortality of unavoidable bycatch.

Network Issues

- No council established a required standardized bycatch reporting system.
- Of the amendments submitted to NMFS to date, none contain any new measures to reduce bycatch.
- NMFS has allowed the councils to ignore the bycatch requirements by approving the vast majority of these deficient bycatch reduction measures (to date, only 5 of 22 amendments where NMFS has issued a decision have been disapproved).

To address these concerns, Congress may wish to refine the definition of bycatch to more specifically address the root causes and effects of this problem and its harmful effects on fish populations and marine ecosystems, non-selective fishing practices. Secondly, Congress must strengthen the national policy in the Magnuson-Stevens Act to avoid bycatch in marine fisheries. Finally, amend the Magnuson-Stevens Act to require fisheries managers to establish bycatch minimization standards and schedules to meet those standards.

Essential Fish Habitat (EFH)

The SFA requires councils to describe, identify, and conserve EFH for each managed species. The Act also requires councils to assess the impacts of all fishing activities on EFH and minimize any adverse impacts. Further, the SFA requires NMFS to identify federal activities that may adversely impact EFH and provide recommendations to those agencies on ways to minimize or mitigate those adverse impacts.

Network Issues

- All of the councils failed to conduct comprehensive assessments of fishing impacts on EFH.
- Every council failed to adequately reduce the harmful effects of fishing on EFH. Only two councils (North Pacific and South Atlantic) adopted any measures to protect EFH from fishing, and those measures do not adequately protect all EFH within each council's jurisdiction.
- NMFS has approved all but one of these inadequate EFH amendments (it recently

disapproved the fishing impacts on EFH sections for three of the Mid-Atlantic Council's FMPs). In other cases, NMFS has appropriately disapproved amendments for not assessing the impacts of all fishing activities under a council's jurisdiction, while at the same time approving wholly inadequate assessments of certain fishing activities. For example, it disapproved parts of the Gulf of Mexico's amendment for not assessing all fishing gear, but approved a cursory analysis of shrimp trawling.

- The one bright spot in the otherwise mediocre response to the SFA was the identification of EFH. Across the board, councils engaged in a thorough information gathering process, solicited much public input, and produced documents that should help protect EFH.
- In an effort to appease development interests, NMFS is preparing expedited and consolidated EFH consultation procedures. The Network is concerned that these new procedures will not result in enhanced protection of EFH, as envisioned by Congress.

To address these concerns, the Subcommittee may wish to consider an amendment to the Magnuson-Stevens Act, to require regional fishery management councils to act to protect EFH from adverse impacts from fishing. To further encourage councils to take action, amend the Act to prohibit the introduction of new fishing gear or the opening of closed areas to prohibit fishing gear unless EFH damage is minimized. Finally, to ensure that EFH is protected from land-based activities, the Subcommittee could enhance the EFH consultation authority by requiring federal agencies to ensure that their actions are not likely to adversely impact EFH.

General Fisheries Management Concerns

Fisheries Data

The Network has several other concerns with federal fisheries management. One of the most serious is the lack of comprehensive fisheries data. Fisheries management decisions are too often made without adequate information. In many parts of the country, inadequate fisheries surveys are conducted because of a lack of funding. For example, west coast fisheries surveys are only conducted once every three years. In other fisheries, managers rely on self-reporting by fishermen. This type of data is often of questionable accuracy because it is used to enforce quotas and assess bycatch, fishers may have a tendency to under report. Finally, not all fishing sectors are adequately assessed, often because of the difficulty in conducting assessments. For example, the catch of party fishing boats – vessels carrying from 20 to more than 100 recreational fishers -- is not being quantified. This is a fast-growing sector of recreational fishing whose potentially significant catches must be quantified and included in calculations of fish stock

abundance.

The Subcommittee may wish to consider addressing this problem in two ways. First, ensure that adequate funds are available for fisheries independent assessments of fish population size. Fishery independent data are essential to providing unbiased indices of abundance for stock assessments, which are too often based on self-reported fishery-dependent data. Inadequate fishery-independent data is recognized as a major impediment to sound fisheries management. NMFS is attempting to address these problems by purchasing four new fisheries research vessels, funding for the first is contained in its FY 2000 budget request. The Subcommittee should support this request as well as funding for fisheries surveys generally.

Another way to increase funding for fisheries surveys is to earmark a portion of outer continental shelf (OCS) revenues for fisheries data collection. As you know, there are several legislative proposals before the Congress to distribute OCS revenues to states. The Network has not taken a position in support of, or opposition to, any particular bill. However, we would like to encourage you to set aside at least \$50 million annually for the collection of fisheries data. Such funds should be available for the conduct of projects in both state and federal waters. These programs should be undertaken jointly by NMFS and the three interstate marine fisheries commissions. Such cooperative programs will ensure that the data collected is consistent among the states and useful to federal fisheries managers. An example of such a program is the Atlantic Coast Cooperative Statistics Program which is conducted cooperatively by NMFS and the Atlantic States Marine Fisheries Commission.

The second way to obtain fisheries data is through the use of on board observers. Observers are essential to monitoring and minimizing bycatch as well as collecting other important fisheries information. Fisheries managers recognize the need for objective observation and data collection to effectively manage marine fish and fisheries. Managers' abilities to address the problems of overfishing, bycatch, and degradation of fish habitat are limited because they do not have accurate and reliable information on a fishing vessel's catch, including bycatch and discards. Observer generated information can provide the statistically significant and reliable information necessary to meet the objectives of the Magnuson-Stevens Act, including monitoring, analyzing, and reporting bycatch and discards, landings, and fishing impacts on EFH.

To address these problems, the Congress may amend the Magnuson-Stevens Act to: 1) establish a mandatory fishery observer program for all federally managed fisheries; and 2) fund observer programs with a user fee based on value and applied to all fish landed and sold in the United

States.

Regional Fishery Management Councils

The regional fishery management councils are charged by the Magnuson-Stevens Act with developing FMPs and FMP amendments for the managed species under their jurisdiction. Therefore, the councils were responsible for developing SFA implementation amendments, and as we pointed out in our report, they all “missed the boat.” While much of the blame can be placed at the feet of NMFS for the regulatory and other guidance that it provided, the councils are also responsible for not adequately addressing the requirements of the SFA. The Network believes that the councils’ dismal response to the SFA is at least in part due to their composition. Although the councils are charged with the conservation and management of the nation’s marine fish, which are held in trust for all Americans, the councils are dominated by representatives of the fishing industry. Interests of the general public, as well as non-consumptive users of marine fish, such as divers, are not adequately represented on the councils.

Marine fish are public resources. Decisions regarding their management should be made in the public interest, not simply the economic interest of a few in the fishing industry. Accordingly, representatives of the public interest must sit on regional fishery management councils.

To address this concern, Congress may wish to amend the Magnuson-Stevens Act to ensure that councils are more broadly representative of the public interest as they make decisions regarding the conservation and management of public resources. Additionally, governors should be required to consult with conservation groups before nominating individuals to a council.

Network Reaction to Reauthorization Issues Raised by the Council Chairmen

The Network has reviewed the reauthorization issues raised by the council chairmen. While the Network is supportive of certain of these suggestions, we have significant concerns with others. Below is a listing of our concerns.

Rescinding the Congressional Prohibitions on Individual Fishing Quotas (IFQs) or Individual Transferable Quotas (ITQs)

The council chairs are advocating, unconditionally, that the moratorium on IFQs not be extended. The Network disagrees and believes that the moratorium should be extended unless Congress

satisfactorily addresses all of the Network's conservation principles. Standards must be adopted that, among other things, clarify that IFQ programs: 1) do not create a compensable property right; 2) demonstrably provide substantial new conservation benefits to the fishery; 3) are of limited duration, not to exceed five years; and 4) are reviewed periodically by an independent body to determine whether they are living up to these standards.

Regulating Non-Fishing Activities of Vessels

The council chairs have requested additional legal authority to regulate non-fishing activities of vessels that adversely impact EFH. The Network supports this proposal. However, we find it ironic that the councils would ask for additional authority to protect EFH when none of the councils have used their existing authority to adequately reduce the harmful effects of fishing on EFH. To justify their proposal, the council chairs point out that anchor chains can damage 70 acres of bottom habitat. While that is a significant area of impact, it pales in comparison to the area impacted by fishing activities. In New England, scientists from the University of Connecticut have found that the 40,806 square kilometer bottom of Georges Bank is "plowed" by bottom trawls and dredges between two and four times per year. Given the much greater area impacted by fishing activities, we hope that this request for new authority represents a renewed emphasis by the councils to protect EFH.

Observer Program

The council chairmen have asked that they be given discretionary authority to establish fees to help fund observer programs modeled after the authority granted to the North Pacific Council. The Network strongly supports observer programs. However, we differ from the council chairs in that we believe that mandatory observer programs should be established in all fisheries to provide statistically valid and reliable information for monitoring, analyzing, and reporting bycatch and discards, landings, and fishing impacts on EFH. Moreover, we believe that such programs should be industry funded.

Essential Fish Habitat

The Network strongly objects to the council chairs suggestion that the legal definition of EFH be modified in order to narrow its geographic scope. The legal definition of EFH is: "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The key to the definition is how "necessary" is interpreted. The councils and NMFS could have interpreted

the area that is “necessary” to be smaller. However, they chose to identify EFH in a precautionary manner and designated fairly large areas as EFH. Given the general lack of information on EFH this is appropriate. As more and better information becomes available, the areas identified as EFH can be narrowed. The definition of EFH does not need to be changed for this to happen.

Rebuilding Periods

The Network strongly opposes the councils’ suggestion that they be given greater latitude in specifying rebuilding periods and that economic considerations be given equal or greater consideration. As I stated earlier, the councils have fully utilized the latitude provided them by consistently developing 10-year rebuilding plans – the longest allowed under current law. Allowing the councils greater latitude and placing greater emphasis on economics will result in extending rebuilding periods even longer. Extending rebuilding periods beyond that which is biologically feasible, thus allowing overfishing to continue in the short-term, increases the chances that overfished stocks will not be rebuilt. Instead of easing economic hardship, it prolongs it. The best way to minimize the economic impact of fisheries conservation measures is to insure the long-term stability of fish stocks. Extending rebuilding periods past the current limit of 10 years will perpetuate the boom and bust cycles that have characterized our fisheries.

Redefine “Overfishing”

The council chairs have stated that they believe that there are a number of problems with basing the definition of overfishing on maximum sustainable yield (MSY). While the council chairs have not made a specific proposal to modify the definition of overfishing, we are concerned that they seem to be blaming the use of MSY for the large number of fish that are defined as overfished. This is akin to shooting the messenger when you don’t like the message. The Network opposes any changes to the definition of overfishing. The National Standard Guidelines allow the use of “alternatives to specifying MSY” when data are insufficient to estimate MSY directly. In addition, deficiencies in the data upon which MSY based can, and should, be addressed through the use of uncertainty buffers. Under such a system, MSY would be lowered to guard against uncertainty, thus protecting fish stocks from being overfished because of errors in estimating MSY.

Thank you for allowing the Marine Fish Conservation Network the opportunity to discuss implementation of the Magnuson-Stevens Act. The Network looks forward to working with the Subcommittee as it reviews implementation of the SFA by NMFS and the councils, and develops legislation to reauthorize the Magnuson-Stevens Act. I am prepared to answer any questions

members of the Subcommittee may have.